

October 9, 2008

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Tukwila Planning Commission
City of Tukwila
Department of Community Development
6300 Southcenter Boulevard, #100
Tukwila, WA 98188

Re: October 9, 2008 Public Hearing – Comments on Draft Shoreline Master Program

Dear Planning Commission:

Curran Law Firm represents the Strander family, owners of several parcels on the South side of 48th Ave. South between Interurban Ave. South and the Duwamish River. The Stranders have a long history with the City of Tukwila and have owned property in the area for more than ninety years.

Strander Parcels

The Strander parcels are located at River Mile 9 in the area designated as Urban Conservancy Environment under the Draft Shoreline Master Program ("SMP"). The parcels will be subject to a 100 foot buffer and 200 foot environment under the SMP. The Strander parcels are not behind a levee.

Two Strander parcels in particular will be affected by the SMP: 12840 and 12900 48th Ave. South, parcel numbers 0004800019 ("parcel 19") and 0004800018 ("parcel 18") respectively. Parcels 18 and 19 are leased to Penske Truck Leasing Co. Parcel 18 is developed with a 6,000 square foot maintenance facility. Parcel 19 is used as a storage yard for the fleet of rental trucks. There are no improvements to Parcel 19 other than it being paved for parking of the Penske truck fleet.

Parcel 19 is the closest parcel to the river but does not abut the river. The Stranders sold the thirty feet of parcel 19 that abutted the river to King County in 1973 for fair market value to become part of the Green River Trail. Most of parcel 19 lies within the 200 foot Urban Conservancy Environment described in the SMP; the northern boundary of parcel 19 extending landward from the trail approximately 260 feet and the southern boundary extending landward from the trail approximately 200 feet. Between the northern and southern boundaries, parcel 19 is approximately 200 feet deep.

Nonconforming Use

Under the SMP, the current use of parcel 19 as a storage yard for parking will not be permitted since off street parking is not allowed within the 100 foot Urban Conservancy Environment Buffer. SMP, Section 8.3(A)(1). Such parking could only continue as a nonconforming use, subject to Chapter 18.70 of the Tukwila Municipal Code ("TMC") for nonconforming uses.

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The problem with nonconforming use is that it is subject to significant limitations.

Nonconforming use status can be lost if the use stops for six (6) months (TMC 18.70.040(3)), if the existing structures are expanded (TMC 18.70.050(1)), and if the annual cost of repair of a building exceeds 25% of the value of the building (TMC 18.70.060). If Stranders lose their current tenant and are not be able to replace the tenant within six (6) months, the use of all of parcel 19 for parking will be prohibited.

Nonconforming use status also reduces property value, which means the owners have less collateral to use for loans for maintenance and improvements, and it makes the property harder to sell and insure.

There is nothing in the SMP or the TMC that addresses a situation like the Stranders' where one parcel outside the Shoreline Environment is dependent upon another parcel (i.e., parcel 18 is dependent upon the parking on parcel 19). It is likely that there are many such situations along the river. Read literally, one could assume that the nonconforming use status of parcel 19 would not be affected by alterations to parcel 18, but that is not what we have been told by staff of the Department of Community Development (the "Department"). Staff believes parcels under common control are all subject to the same use restrictions governing the parcel within the buffer. Thus, if alterations to the building on parcel 18 exceed the threshold of TMC 17.70.060, that portion of parcel 19 lying within the buffer could no longer be used for parking. This ambiguity should be clarified in the SMP.

We would prefer that exceptions to Chapter 18.70 TMC be included in the SMP, or that Chapter 18.70 TMC be amended, to protect nonconforming use status by limiting loss of such status to major redevelopment of a parcel of at least 50% of the value of the existing improvements or a 10% increase in the square footage of the footprint, without minimum triggers for maintenance, repairs, vacancy, use or change of occupancy. Reconstruction after any accidental destruction of a structure should be allowed as a nonconforming use for commercial properties just as it is for low density residential, so long as the dimensions and location of the rebuilt structure remain the same as the one destroyed.

Redevelopment Standards

The Stranders are concerned about the proposed Shoreline Development Standards in Section 9 of the SMP. The triggers for such standards are minimal, including alterations over three years in excess of 10% of the assessed value of a building, mere change in occupancy of the building and paving. Does paving include repair such as overlays? The standards affect the entire 200 foot Shoreline Environment, not just the 100 foot buffer. The off street parking standard prohibits parking on the river side of a development (Section 9.9(B)). It is ambiguous whether this is merely an extension of the nonconforming use, or a loss of the nonconforming use status. This needs to be clarified, preferably by allowing a nonconforming use, if that status must be used at all.

If parcel 19 loses its status as a nonconforming use, all these development standards will have to be satisfied for the benefit of the public at the private expense of the Stranders. The Stranders will have to add a rain garden (Section 9.4(G)), screening (Section 9.9(C)), pedestrian access (Section 9.9(D)), other water treatment techniques (Section 9.9(F)), remove invasive vegetation and replace with native vegetation (Section 9.10(C) and (D)).

We see no rational relationship between the requirements imposed on property owners like the Stranders to improve the aesthetics and maybe the ecological function of the Urban

Conservancy Environment and the changed uses of the property that trigger these requirements. We suggest that there be a requirement for the City to determine whether any such trigger actually has an adverse impact on the environment before requiring any public improvement to be made and then limit that improvement to what is necessary to offset the impact.

Buffers

The Stranders question the need for a 100 foot buffer and the need for a 2.5:1 angle of repose of the river bank. The need for this change in the bank of the river is not explained in the SMP. There certainly is no rational relation between any new use or alteration of the properties and this requirement to change the slope of the bank all along both sides of the river for its entire length within the City. Based on the drawings prepared by the Department staff, the impact of re-sloping the river bank will be even more detrimental to owners like the Stranders than the nonconforming use situation. At least with a nonconforming use, there is some private commercial use to be made of the property. According to the drawings prepared by the Department staff, by the time the bank is re-sloped, a trail added, access to the river added and landscaping added to screen improper parking, the entire 100 foot buffer will be used for public purposes; all with no compensation to property owners such as the Stranders.

The need for such wide buffers and gradual slopes needs to be better analyzed and should not be applied uniformly to all properties without consideration of what is needed for each property.

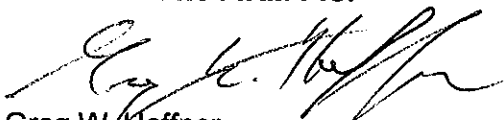
Public Participation

We thank the Commission and Department Staff for giving us this opportunity to express our concerns about the SMP. We know there are time constraints imposed on the City by Washington State Department of Ecology because of a grant to help fund the work being done by the City on the SMP. However, we believe additional time is needed for the Commission, staff and the property owners to work together on revisions to the SMP. We would like to see a Citizens Advisory Group formed to participate in this process. Apparently there was such a group called Tukwila Tomorrow back in the 1990's, but no such public participation has been included in the process for this SMP.

Serious legal challenges have already been raised as likely scenarios if the SMP is enforced as currently drafted. These issues can be found on the City's website in comments 5, 7, 14 and 19 from the Planning Commission's public hearing held on August 28, 2008. Nobody wants to see such challenges raised in court, and now is the best time to address these concerns while the property owners most affected are willing to work with the Commission and City.

Sincerely,

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